

AMENDED IN SENATE APRIL 3, 2003

**SENATE BILL**

**No. 173**

**Introduced by Senator Dunn**

February 12, 2003

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An act to add Section 17206.7 to the Business and Professions Code, and to add Section 391.1 to the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 173, as amended, Dunn. Energy.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Existing law provides for a short-run avoided cost methodology for the price paid by a public utility electrical corporation for electricity generated by a nonutility, qualifying small power production or qualifying cogeneration facility (QF), as defined. This methodology includes adjustments to prices based upon gas index prices.

This bill would ~~require~~ *restrict* the commission to *the use of only* gas price indexes determined by the commission to be reliable and verified, *and meeting listed requirements*, and *would require the commission* to establish standards for reliability and verification for gas price indexes used to establish or adjust prices paid to QFs by a public utility electrical corporation. *The bill would also restrict the commission, if it establishes a price benchmark used to determine the reasonability of utility natural gas purchases for the purpose of determining a utility bonus payment, to the use of index prices that meet those listed requirements.* The bill would further provide that if the commission determines that no reliable and verifiable gas price index exists meeting the standards adopted by

the commission, the commission is required to establish and adjust the prices paid to QFs by a public utility electrical corporation in an equitable manner, consistent with the requirements of the federal Public Utility Regulatory Policies Act of 1978.

(2) Existing law prohibits unfair competition, including any unlawful, unfair, or fraudulent business act or practices. In an action brought in the name of the people by the Attorney General or any district attorney, and in specified instances by a county counsel, city prosecutor, or city attorney, existing law provides that any person who engages, has engaged, or proposes to engage in unfair competition, is liable for a civil penalty not to exceed \$2,500 for each violation.

This bill would provide that any person engaging in an act of unfair competition of making or proposing to make a false statement or report for use in a gas index price, is liable for a civil penalty not to exceed \$25,000 for each violation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 391.1 is added to the Public Utilities  
2 Code, to read:

3 391.1. (a) (1) The commission ~~shall~~ *may* use only gas price  
4 indexes determined by the commission to be reliable and verified,  
5 for establishing or adjusting prices paid to nonutility power  
6 generators by a public utility electrical corporation pursuant to  
7 Section 390.

8 (2) *The commission may determine an index to be reliable and*  
9 *verified as required by paragraph (1) only if the published index*  
10 *price calculations meet all of the following requirements:*

11 (A) *All transactions that comprise the published index price*  
12 *calculations are transacted on an organized exchange subject to*  
13 *regulation by the federal Commodity Futures Trading*  
14 *Commission.*

15 (B) *The exchange on which transactions are made is required*  
16 *by the federal Commodity Futures Trading Commission to*  
17 *maintain and enforce an internal auditing mechanism and to*  
18 *maintain records of trading activity so a clear audit trail is*  
19 *possible.*

1 (C) *The exchange on which transactions are made is required*  
2 *to conduct, with federal Commodity Futures Trading Commission*  
3 *oversight, market surveillance and trade surveillance designed to*  
4 *prevent market manipulation and other anticompetitive activity.*

5 (D) *The transactions that comprise the published index price*  
6 *are reported to the exchange and timestamped within one minute*  
7 *of the transaction.*

8 (E) *Transactions reported to the exchange include all of the*  
9 *following information:*

10 (i) *Price.*

11 (ii) *Volume.*

12 (iii) *Delivery point.*

13 (iv) *Duration.*

14 (v) *Date and time of transaction.*

15 (vi) *Whether the transaction is a purchase or a sale.*

16 (vii) *Counterparty.*

17 (b) *The commission shall establish standards for reliability and*  
18 *verification for gas price indexes used to establish or adjust prices*  
19 *paid to nonutility power generators by a public utility electrical*  
20 *corporation pursuant to Section 390.*

21 (c) *If the commission establishes a price benchmark, based on*  
22 *a single index or a combination of published gas index prices, used*  
23 *to determine the reasonability of utility natural gas purchases for*  
24 *the purpose of determining a utility bonus payment, the*  
25 *commission may use only index prices that meet the requirements*  
26 *of subdivision (a).*

27 (d) *If the commission determines that no reliable and verifiable*  
28 *gas price index exists meeting the standards adopted pursuant to*  
29 *this section, the commission shall establish and adjust the prices*  
30 *paid to nonutility power generators by a public utility electrical*  
31 *corporation in an equitable manner, consistent with the federal*  
32 *Public Utility Regulatory Policies Act of 1978 (federal Public Law*  
33 *95-617), including any amendments to that act and the regulations*  
34 *adopted under that act by the Federal Energy Regulatory*  
35 *Commission.*

36 SEC. 2. Section 17206.7 is added to the Business and  
37 Professions Code, to read:

38 17206.7. (a) Making a false statement or report for use in an  
39 energy price index is unfair competition.

1 (b) Notwithstanding the maximum civil penalty in Section  
2 17206, any person who makes, has made, or proposes to make a  
3 false statement or report for use in a gas price index pursuant to  
4 Section 390 of the Public Utilities Code, shall be liable for a civil  
5 penalty not to exceed twenty-five thousand dollars (\$25,000) for  
6 each violation.

7 SEC. 3. (a) Subdivision (a) of Section 17206.7 of the  
8 Business and Professions Code does not constitute a change in, but  
9 is declaratory of, existing law.

10 (b) It is the intention of the Legislature in adding subdivision  
11 (b) of Section 17206.7 of the Business and Professions Code, to  
12 change existing law by providing for civil penalties in an amount  
13 higher than would be available pursuant to Section 17206.

